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FILED
07/10/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
43B-0827-R-2022
Lambert, Kathryn
7.00

MONTANA WATER COURT, YELLOWSTONE DIVISION
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN
BASIN 43B
PRELIMINARY DECREE

CLAIMANT: Telmar Terland & Sons

CASE 43B-0827-R-2022

43B 130381-00

43B 130382-00

43B 130383-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

These claims appeared in the Preliminary Decree with issue remarks concerning the points of diversion. The issue remarks were not addressed through the objection process. The Water Court is required to resolve the issues raised by each issue remark. Section 85-2-

248, MCA.

Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimant an opportunity to file additional information or evidence. On February 3, 2023 the claimant filed a Response specifying various corrections to be made. The April 20, 2023 Court Minutes and Order Setting Filing Deadline memorialized additional changes and included DRAFT abstracts showing the revised points of diversion for all three claims. On May 11, 2023 the claimant filed its response confirming these revisions. These documents are viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

"All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section." Section 85-2-248(2), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

FINDINGS OF FACT

1. For claims 43B 130381-00 and 43B 130383-00, the Preliminary Decree states that the points of diversion are:

| <u>QTRSEC</u> | <u>SEC</u> | <u>TWP</u> | <u>RGE</u> | <u>COUNTY</u> |
|---------------------------|------------|------------|------------|---------------|
| SESE | 35 | 1S | 16E | SWEET GRASS |
| Ditch Name: TERLAND DITCH | | | | |
| S2NW | 36 | 1S | 16E | SWEET GRASS |
| <no ditch name> | | | | |

The claims each appeared in the Preliminary Decree with the following issue remark:

THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE SESESE SEC 35 TWP 1S RGE 16E SWEET GRASS COUNTY.

For each claim, the points of diversion and ditch names should be:

| <u>QTRSEC</u> | <u>SEC</u> | <u>TWP</u> | <u>RGE</u> | <u>COUNTY</u> |
|---|------------|------------|------------|---------------|
| NENWNE | 2 | 2S | 16E | SWEET GRASS |
| Ditch Name: KNOX DITCH ALSO KNOWN AS FIRST DITCH | | | | |
| S2NW | 36 | 1S | 16E | SWEET GRASS |
| Ditch Name: BREEDING DITCH ALSO KNOWN AS SECOND DITCH | | | | |

The point of diversion issue remarks should be removed as addressed and resolved.

The Preliminary Decree also includes the following notice remark on 43B 130381-00:

DITCH NAME WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

This remark provides notice of this change made prior to issuance of the Preliminary Decree.

It does not raise an unresolved issue which needs to be addressed. The remark should be removed as having served its notice purpose.

The Preliminary Decree also includes the following notice remarks on 43B 130383-00:

THE TIMELY FILED OBJECTION OF GEORGE MEYES WAS AMENDED BY AGREEMENT BY THE PARITES TO INCLUDE PERIOD OF USE. BECAUSE THIS ELEMENT WAS NOT INCLUDED ON THE OBJECTION LIST, ANY WATER USER WHOSE RIGHTS MAY BE ADVERSELY AFFECTED BY ENFORCEMENT OF THIS CHANGE MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

DITCH NAME WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

The first remark provides notice of actions taken during the Temporary Preliminary Decree proceedings and does not raise an unresolved issue which needs to be addressed. The second remark provides notice of a change made prior to issuance of the Preliminary Decree. It does not raise an unresolved issue which needs to be addressed. These remarks should be removed as having served their notice purposes.

2. For claim 43B 130382-00, the Preliminary Decree states that the points of diversion are:

| <u>QTRSEC</u> | <u>SEC</u> | <u>TWP</u> | <u>RGE</u> | <u>COUNTY</u> |
|-----------------|------------|------------|------------|---------------|
| S2NW | 36 | 1S | 16E | SWEET GRASS |
| <no ditch name> | | | | |
| NESESW | 25 | 1S | 16E | SWEET GRASS |

<no ditch name>

The claim appeared in the Preliminary Decree with the following issue remark:

USE OF THE TERLAND DITCH TO CONVEY WATER TO THE PLACE OF USE MAY BE QUESTIONABLE.

The points of diversion and ditch names should be:

| <u>QTRSEC</u> | <u>SEC</u> | <u>TWP</u> | <u>RGE</u> | <u>COUNTY</u> |
|---------------|------------|------------|------------|---------------|
| NENWNE | 2 | 2S | 16E | SWEET GRASS |

Ditch Name: KNOX DITCH ALSO KNOWN AS FIRST DITCH

| | | | | |
|------|----|----|-----|-------------|
| S2NW | 36 | 1S | 16E | SWEET GRASS |
|------|----|----|-----|-------------|

Ditch Name: BREEDING DITCH ALSO KNOWN AS SECOND DITCH

The Preliminary Decree also includes the following notice remark on 43B 130382-00:

THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A FILED CLAIM ON BRIDGER CREEK WITH A PRIORITY DATE 02/15/1893 CASE NO 86, SWEET GRASS COUNTY. IF NO OBJECTIONS ARE FILED TO PRIORITY DATE OR TYPE OF HISTORICAL RIGHT, THESE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS REMARK WILL BE REMOVED.

This remark provides notice of a possible issue. No objection was filed. The remark should be removed as having served its notice purpose.

CONCLUSION OF LAW

The information provided by the claimant is sufficient to resolve the issue remarks without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim for each claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

Service via USPS Mail:

Telmar Terland & Sons
35 Terland Road
Reed Point, MT 59069

\\JUDHLNSRV-DATA\SHARE\JUDGALH2OSRV (DATAVOL)\SHARE\WC-BASIN FOLDERS\43B PD\43B CASES\827R\827R MR 3-29-23 JBC.DOCX

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 130381-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: TERLAND, TELMAR & SONS
238 A BRIDGER CREEK ROAD
REED POINT, MT 59069

***Priority Date:** JULY 13, 1906

Type of Historical Right: FILED

Purpose (use): IRRIGATION
Irrigation Type: FLOOD

Flow Rate: 2.50 CFS

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 2 - MODERATELY HIGH

***Maximum Acres:** 112.70

***Source Name:** BRIDGER CREEK
Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

| <u>ID</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------------------------|---|----------------|------------|------------|------------|---------------|
| 1 | | NENWNE | 2 | 2S | 16E | SWEET GRASS |
| Period of Diversion: | MARCH 1 TO NOVEMBER 1 | | | | | |
| Diversion Means: | HEADGATE | | | | | |
| Ditch Name: | KNOX DITCH ALSO KNOWN AS FIRST DITCH | | | | | |
| 2 | | S2NW | 36 | 1S | 16E | SWEET GRASS |
| Period of Diversion: | MARCH 1 TO NOVEMBER 1 | | | | | |
| Diversion Means: | HEADGATE | | | | | |
| Ditch Name: | BREEDING DITCH ALSO KNOWN AS SECOND DITCH | | | | | |
| Period of Use: | MARCH 1 TO NOVEMBER 1 | | | | | |

***Place of Use:**

| <u>ID</u> | <u>Acres</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|---------------|--------------|-----------------|----------------|------------|------------|------------|---------------|
| 1 | 7.00 | | SESE | 35 | 1S | 16E | SWEET GRASS |
| 2 | 7.70 | | SWSW | 36 | 1S | 16E | SWEET GRASS |
| 3 | 21.80 | | N2SW | 36 | 1S | 16E | SWEET GRASS |
| 4 | 70.40 | | N2 | 36 | 1S | 16E | SWEET GRASS |
| 5 | 5.80 | | SESW | 25 | 1S | 16E | SWEET GRASS |
| Total: | 112.70 | | | | | | |

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

130381-00

130382-00

130383-00

130384-00

130385-00

THIS CLAIM IS SUBJECT TO A PRIVATE AGREEMENT FILED 01/17/1991 WHICH CAN BE FOUND IN THE MASTER'S REPORT IN THE CLAIM FILE.

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 130382-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: TERLAND, TELMAR & SONS
238 A BRIDGER CREEK ROAD
REED POINT, MT 59069

***Priority Date:** FEBRUARY 15, 1893

Type of Historical Right: FILED

Purpose (use): IRRIGATION
Irrigation Type: FLOOD

***Flow Rate:** 1.50 CFS

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 2 - MODERATELY HIGH

***Maximum Acres:** 87.20

***Source Name:** BRIDGER CREEK
Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

| <u>ID</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------------------------|---|----------------|------------|------------|------------|---------------|
| 1 | | NENWNE | 2 | 2S | 16E | SWEET GRASS |
| Period of Diversion: | MARCH 1 TO NOVEMBER 1 | | | | | |
| Diversion Means: | HEADGATE | | | | | |
| Ditch Name: | KNOX DITCH ALSO KNOWN AS FIRST DITCH | | | | | |
| 2 | | S2NW | 36 | 1S | 16E | SWEET GRASS |
| Period of Diversion: | MARCH 1 TO NOVEMBER 1 | | | | | |
| Diversion Means: | HEADGATE | | | | | |
| Ditch Name: | BREEDING DITCH ALSO KNOWN AS SECOND DITCH | | | | | |
| Period of Use: | MARCH 1 TO NOVEMBER 1 | | | | | |

***Place of Use:**

| <u>ID</u> | <u>Acres</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|---------------|--------------|-----------------|----------------|------------|------------|------------|---------------|
| 1 | 68.40 | | W2SE | 25 | 1S | 16E | SWEET GRASS |
| 2 | 18.80 | | W2NE | 36 | 1S | 16E | SWEET GRASS |
| Total: | 87.20 | | | | | | |

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

130381-00

130382-00

130383-00

130384-00

130385-00

THIS CLAIM IS SUBJECT TO A PRIVATE AGREEMENT FILED 01/17/1991 WHICH CAN BE FOUND IN THE MASTER'S REPORT IN CLAIM FILE.

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 130383-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: TERLAND, TELMAR & SONS
238 A BRIDGER CREEK ROAD
REED POINT, MT 59069

Priority Date: MARCH 31, 1896

Type of Historical Right: DECREED

Purpose (use): IRRIGATION
Irrigation Type: FLOOD

Flow Rate: 1.25 CFS

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 2 - MODERATELY HIGH

***Maximum Acres:** 112.70

***Source Name:** BRIDGER CREEK
Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

| <u>ID</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|---|-----------------|----------------|------------|------------|------------|---------------|
| 1 | | NENWNE | 2 | 2S | 16E | SWEET GRASS |
| *Period of Diversion: MARCH 1 TO NOVEMBER 1 | | | | | | |
| Diversion Means: HEADGATE | | | | | | |
| Ditch Name: KNOX DITCH ALSO KNOWN AS FIRST DITCH | | | | | | |

| | | | | | | |
|--|--|------|----|----|-----|-------------|
| 2 | | S2NW | 36 | 1S | 16E | SWEET GRASS |
| *Period of Diversion: MARCH 1 TO NOVEMBER 1 | | | | | | |
| Diversion Means: HEADGATE | | | | | | |
| Ditch Name: BREEDING DITCH ALSO KNOWN AS SECOND DITCH | | | | | | |

***Period of Use:** MARCH 1 TO NOVEMBER 1

***Place of Use:**

| <u>ID</u> | <u>Acres</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------|--------------|-----------------|----------------|------------|------------|------------|---------------|
| 1 | 7.00 | | SESE | 35 | 1S | 16E | SWEET GRASS |
| 2 | 7.70 | | SWSW | 36 | 1S | 16E | SWEET GRASS |
| 3 | 21.80 | | N2SW | 36 | 1S | 16E | SWEET GRASS |
| 4 | 70.40 | | N2 | 36 | 1S | 16E | SWEET GRASS |
| 5 | 5.80 | | SESW | 25 | 1S | 16E | SWEET GRASS |

Total: 112.70

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

130381-00

130382-00

130383-00

130384-00

130385-00

THE CLAIM IS SUBJECT TO A PRIVATE AGREEMENT FILED 01/17/1991 WHICH CAN BE FOUND IN THE MASTER'S REPORT IN THE CLAIM FILE.